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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mollybeth R. Kocialski, Esq.
SHERIDAN ROSS P.C.
Suite 1200
1560 Broadway
Denver, CO 80202-5141

EXAMINER

ROVNAK, JOHN EDMUND

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 04/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,273

Applicant(s)

PRICE ET AL.

Examiner

John E. Rovnak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/24/02.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-27 and 29-47 is/are rejected.
- 7) ☐ Claim(s) 11 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 20 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Harms et al (Family Day Care Rating Scale). Harms et al discloses a method and system for evaluating an educational program, comprising developing criteria (i.e. Language and Reasoning) which address strengths and weaknesses of the educational program (see figures) observing the criteria in the educational program (see page 4, item 2. regarding "observers"), assigning a numerical value to the criteria (see figures), and assigning an overall rating to the educational program based on the numerically valued criteria (see page 4, item 11. regarding "total score"). Harms et al discloses observing factors being related to the said criteria (For the example of Learning Activities), p.7, see the factors of 18. Eye-hand coordination, 19. Art, 20. Music and movement, etc) .

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-9, 12, 20-23, 25-26, 29 and 37-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torma et al in view of Harms et al (Family Day Care

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Rating Scale). Torma et al discloses a method of evaluating a program comprising developing criteria of the program (col. 4 lines 28-35), observing the criteria (col. 3 lines 62-64), assigning a numerical value to the criteria (col. 6 lines 27-29), and assigning an overall rating to the program (Equation 1). The Abstract of Torma et al teaches that "this approach is applicable to ... just about any organized human endeavor involving quality, cost and access factors". Harms et al et al teaches the measure of quality evaluation for an educational program including the use of criteria with various factors as discussed above. It would therefore have been obvious to one of ordinary skill in the art that the method and system of Torma et al is applicable to educational programs. Torma et al addresses weaknesses of a program. It would have been obvious to one of ordinary skill in the art that strengths could also be addressed as taught by Harms et al (see an example on p. 21 of Harms et al under the column Excellent).

The use of averaging and weighting are conventional statistical methods for survey analysis. Moreover, Torma et al discloses the use of averaging and weighting (col. 7 lines 19-62).

Torma et al utilizes an electronic database and processor (col. 3).

Use of 1-4 stars to represent a lowest to highest rating is conventional in the survey art (ie. Hotel rating) and would have been an obvious option for the rating scale of Harms et al.

Harms et al discloses classroom observation (p. 4 item 3). Page 5 col. 1 discusses the asking of questions (interviews). Also see p. 4 items 9-10, regarding arrangement to ask questions. Item 9 inherently includes collecting documents

(regarding health, safety schedule of daily activities). Item 10 identifies credentials of personnel (first aid training). Talking with other parents and the children would have been a conventional evaluation method for an educational program and therefore obvious to one of ordinary skill in the art.

Harms et al discloses observation of space and furnishings (p. 6), language and reasoning activities and materials (p. 7), personal care routines (p. 19), program structure (p. 18), physical activities (p. 29), interaction between staff and children (inherent), interactions between parents and staff (obvious when parents drop off or pick up the children).

Torma et al does not discuss reevaluating a program to determine the extent of improvement and maintenance. However, reevaluating a program to determine improvement would have been conventional practice in the art and would have been obvious to one of ordinary skill in the art to determine the effect of a program being evaluated using the Torma et al method in view of educational program evaluation of Harms et al.

Orienting or training persons involved in the education program as to the criteria upon which the program will be evaluated is taught by Harms et al (p. 4 items 1 and 2). Debriefing persons involved in an evaluation is a conventional method that would have been obvious to one of ordinary skill in the art and not a patentably limiting step over Torma et al in view of Harms et al. Informing personnel and students of the goals and implementation of the evaluation would have been, if not inherent, obvious to one of

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ordinary skill in the art in view of the presence of the observers. It would have been further obvious that the community and parents be informed as to the evaluation.

Claims 7, 13-19, 24, 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torma et al in view of Harms et al (Family Day Care Rating Scale) and further in view of the NICHD Early Child Care Research Network (Child Outcomes When Child Care Center Classes Meet Recommended Standards for Quality).

Harms et al discloses the evaluation of classroom environment (inherent), staff credentials (see above discussion) and presence of a curriculum (learning activities, item 9). The consideration of the accreditation by official institutions of the program would have been of conventional practice and therefore obvious, and not patentably limiting.

Applicant's specific staff to child ratio choices are a matter of design choice and not patentably limiting, as not being new or unobvious method steps in the education art. Various other arrangements of staff to child ratio would have been a matter of design choice by an institution in view of conventional knowledge and obvious to one of ordinary skill in the art in view of the study by NICHD .

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6, 23 40 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"[O]ther information gathering techniques" is indefinite.

Claims 10, 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The evaluation of factors reflecting basic communication and responsibility of the parents is vague and indefinite.

Claims 11 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morrel-Samuels and DeTore et al disclose further evaluation methods and systems.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John E. Rovnak whose telephone number is (703) 308-3087. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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John Rovnak
Primary Examiner
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April 1, 2003